

July 26, 2013

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Universal Service Contribution Methodology, WC Docket No. 06-122

Dear Ms. Dortch:

In the 2012 *Wholesaler-Reseller Clarification Order*, the Commission directed the Wireline Competition Bureau (Bureau) to revise the sample reseller certificate language and other language in the Form 499-A instructions.¹ Several weeks later, the Bureau proposed revisions to this section of the instructions and sought comment on its proposals.² A number of providers met with Bureau staff to express their concerns with the Bureau's proposal and offered to work with the Bureau to develop alternate model reseller certification language.³

For the past several months, subject matter experts from AT&T, BCE Nexxia, BT Americas, CenturyLink, Orange, Sprint, Verizon, and XO Communications have been working together to develop a proposal for revised Form 499-A instruction language that would be consistent with the *Wholesaler-Reseller Clarification Order*. In the attachment to this letter, the group is submitting its proposal in redline format, showing changes from the reseller section of the Form 499-A instructions currently in effect.⁴

This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules.

¹ *Universal Service Contribution Methodology*, Order, 27 FCC Rcd 13780, ¶ 41 (2012) ("2012 *Wholesaler-Reseller Clarification Order*").

² *Wireline Competition Bureau Seeks Comment on Proposed Changes to FCC Form 499-A, FCC Form 499-Q, and Accompanying Instructions*, WC Docket No. 06-122, Public Notice, DA 12-1872 (rel. November 23, 2012) (*Public Notice*).

³ Letter from Alan Buzacott, Verizon, to Marlene Dortch, FCC, WC Docket No. 06-122 (filed Feb. 14, 2013).

⁴ Members of the group may propose additional changes to the Form 499 instructions at a later date.

Sincerely,

/s/ Mary Henze
Assistant Vice President
AT&T Services, Inc.

/s/ Jonathan Blakey
Vice President, Regulatory Affairs
BCE Nexxia

/s/ Sheba Chacko
Senior Counsel and Head,
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BT Americas Inc.

/s/ Melissa Newman
Vice President Federal Regulatory Policy & Affairs
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/s/ Ivana Kriznic
Regulatory Counsel
Orange Business Services U.S., Inc.

/s/ Marybeth M. Banks
Director – Government Affairs
Sprint Corporation

/s/ Alan Buzacott
Executive Director
Federal Regulatory Affairs
Verizon

/s/ Tiki Gaugler
Senior Attorney, Regulatory
XO Communications

cc: Chin Yoo

2. Attributing Revenues from Contributing Resellers and from End Users

Filers must report revenues using two broad categories: (1) revenues from contributing resellers and (2) revenues from all other sources. Taken together, these revenues should include all revenues billed to customers and should include all revenues on the filers' books of account. Except as noted below, most categories of revenues require the filer to determine whether the customer purchasing the telecommunications is a contributing reseller or instead an end user. The following categories of revenues are intercarrier compensation (not end user revenue) and are reported in Block 3: Per-minute switched access charges and reciprocal compensation (report on Line 304); revenues received from carriers as payphone compensation for originating toll calls (report on Line 306); revenues that filers receive as universal service support from either states or the federal government (report on Line 308); revenues received from another U.S. carrier for roaming service provided to customers of that carrier (report on Line 309); charges for physical collocation of equipment pursuant to 47 U.S.C. § 251(c)(6) (report on Line 307). For these revenue items, the filer is not required to retain Filer 499 ID information or verify that the customer is a reseller.

For the purposes of this Worksheet, "Revenues from services provided for resale by other contributors to federal universal service support mechanisms" are revenues from services provided by underlying carriers to other entities that meet the definition of "reseller" (*see below*). Such revenues are referred to herein as "carrier's carrier revenues" or "revenues from resellers."

An underlying carrier also may include as carrier's carrier revenues any international switched service revenues received from another U.S. reselling carrier where that reselling carrier is using the underlying carrier's service to re-file the foreign-billed traffic of a foreign telephone operator. In this case, the reselling carrier must certify to the underlying carrier that it is using the resold international switched service to handle traffic that both originates and terminates in foreign points. In some instances, reselling carriers are themselves selling the underlying service to another reseller. In these instances, an underlying carrier also may include as carrier's carrier revenue any revenues received from service provided to entities that meet the definition of "reseller."¹ Revenues from all other sources consist primarily of revenues from services provided to end users, referred to here as "end-user revenues." This latter category includes foreign and non-telecommunications revenues.

Revenues from Resellers -- For purposes of completing Block 3, a "reseller" is a telecommunications carrier or telecommunications provider that: (1) incorporates purchased telecommunications services into its own ~~telecommunications~~ offerings; and (2) can reasonably be expected to contribute to federal universal service support mechanisms based on revenues from ~~such those offerings when provided to end users~~. A customer is a reseller if it incorporates a purchased wholesale service into an offering that is, at least in part, assessable telecommunications and contributes to federal universal service support mechanisms for that portion of the offering.²

¹ See 2012 Wholesaler-Reseller Clarification Order, FCC 12-134, at para. 12; *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*; *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-21, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400, 18507 (1997) ("For this purpose, a reseller is a telecommunications service provider that 1) incorporates purchased telecommunications services into its own offerings and 2) can reasonably be expected to contribute to support universal service based on revenues from those offerings"); *Federal-State Joint Board on Universal Service; Request for Review of Decision of the Universal Service Administrator by Global Crossing Bandwidth, Inc.*, CC Docket No. 96-45, Order, 24 FCC Rcd 10824, 10825-26, para. 5 (Wireline Comp. Bur. 2009).

² Thus, for example, if a customer purchases a DS1 line and incorporates that service into an offering of both telephone service and broadband Internet access service, it may certify that it is a reseller for purposes of that purchased service so long as it contributes on the assessable revenues from the telephone service. See 2012 Wholesaler-Reseller Clarification Order at n.98.

Each filer should have documented procedures to ensure that it reports as “revenues from resellers” only revenues from entities that meet the definition of reseller. The procedures should include, but not be limited to, maintaining the following information on resellers: Filer 499 ID; legal name; address; name of a contact person; phone number of the contact person; and, as described below, an annual certification by the reseller regarding its reseller status. Filers shall provide this information to the Commission or the Administrator upon request.

Pursuant to the recent 2012 *Wholesaler-Reseller Clarification Order*,³ ~~providers-filers~~ may demonstrate a reasonable expectation through December 31, 2013, that particular customers were resellers by relying on certificates that are consistent with the sample language included in the 2012 FCC Form 499-A instructions, which is included immediately below for illustrative purposes.

I certify under penalty of perjury that the company is purchasing service for resale in the form of U.S. telecommunications or interconnected Voice over Internet Protocol service. I also certify under penalty of perjury that either the company contributes directly to the federal universal support mechanisms, or that each entity to which the company provides resold telecommunications is itself an FCC Form 499 worksheet filer and a direct contributor to the federal universal service support mechanisms.

Beginning January 1, 2014, filers may demonstrate a reasonable expectation that particular customers are resellers with respect to purchased service(s) by relying on certificates signed each calendar year by the customer that (1) specify which services the customer is or is not purchasing for resale pursuant to the certificate;⁴ and (2) are consistent with the following sample language:

I certify under penalty of perjury that the company is purchasing service(s) for resale, at least in part, in the form of U.S. telecommunications or interconnected Voice over Internet Protocol service. I also certify under penalty of perjury that either the company contributes directly to the federal universal service support mechanisms, at least in part, on revenues from offerings that incorporate the purchased service(s), or the company has a reasonable expectation that each entity to which the company provides resold service itself, in turn, contributes directly to the federal universal service support mechanisms, at least in part, on revenues from offerings that incorporate the purchased service(s).

The filer may demonstrate a reasonable expectation that a customer is a reseller with respect to a service purchased after the date of the annual certificate signed by the customer by relying on either of these received prior to the filing of the applicable Form 499-A: (1) a notification from the customer that the customer is purchasing the service for resale consistent with the annual certificate; or (2) a later certificate covering the purchased service signed by the customer.

If a filer chooses not to obtain a certificate consistent with the sample certificate language or otherwise fails to take steps to form a reasonable expectation that its customers are resellers, it must treat revenues from services provided to such customers as end user revenues. Filers that cannot demonstrate either a reasonable expectation that their customers are resellers or that the customers actually contributed to the federal universal service mechanisms on offerings that incorporate purchased wholesale services Filers

³ See 2012 *Wholesaler-Reseller Clarification Order*, FCC 12-134, at para. 41.

⁴ At the filer’s discretion, the filer may rely on certificates that specify any of the following: (1) that all services purchased by the customer are purchased for resale pursuant to the certificate (“entity-level certification”); (2) that all services associated with a particular billing account, the account number for which the customer shall specify, are purchased for resale pursuant to the certificate (“account-level certification”); (3) that individual services specified by the customer are purchased for resale pursuant to the certification (“service-specific certification”); or (4) that all services except those specified, either individually or as associated with a particular billing account, the account number(s) for which the customer shall specify, are purchased for resale pursuant to the certificate.

~~that do not comply with the above procedures~~ will be responsible for any additional universal service assessments that result if its ~~customers revenues~~ must be reclassified as end users revenues.

Revenues from Entities Exempt from USF Contributions -- For the purposes of filling out this Worksheet—and for calculating contributions to the universal service support mechanisms—certain telecommunications carriers and other providers of telecommunications may be exempt from contribution to the universal service support mechanisms. These exempt entities, including “international only” and “intrastate only” providers and providers that meet the *de minimis* universal service threshold, should not be treated as resellers for the purpose of reporting revenues in Block 3. That is, filers that are underlying carriers should report revenues derived from the provision of telecommunications to exempt carriers and providers (including services provided to entities that are *de minimis* for universal service purposes) on Lines 403–417 of Block 4 of the Telecommunications Reporting Worksheet, as appropriate. Underlying carriers must contribute to the universal service support mechanisms on the basis of such revenues. In Block 5, Line 511, however, filers may elect to report the amounts of such revenues (i.e., those revenues from exempt entities that are reported as end-user revenues) so that these revenues may be excluded for purposes of calculating contributions to TRS, LNPA, and NANPA.